

**Date:** March 9, 2010

<b>DOCKET</b> <b>08-AFC-5</b>
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**To:** Commissioner Jeffrey D. Byron, Presiding Member  
Commissioner Anthony Eggert, Associate Member  
Hearing Officer, Raoul Renaud  
Project Manager, Christopher Meyers

DATE	MAR 9 2010
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RECD.	MAR 12 2010
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**From:** Richard Knox, Project Manager

**Subject:** **Imperial Valley Solar Project Status Report (08-AFC-5)**

Dear Sirs

I would like to take this opportunity to update you the Imperial Valley Solar Project (IVSP) as seen through the lens of the Applicant.

### **Project Schedule**

We appreciate the continuing efforts of the California Energy Commission (Commission), Bureau of Land Management (BLM), and other agencies in considering the IVSP Application for Certification (AFC) but also need to continue to stress the importance of a late August 2010 decision date. Publication of the Staff Assessment/Draft Environmental Impact Statement (SA/DEIS) on February 12, 2010 will go a long way in reaching the Commission's Decision and a Record of Decision (ROD) from the BLM in the August timeframe. We understand that the public comment period will end on May 26, 2010. Meeting the **American Recovery and Reinvestment Act (ARRA)** "shovel ready" status by near year end is critical for this work. We are encouraged that staff moved quickly in scheduling workshops, and that the Committee scheduled the pre hearing conference, and the evidentiary hearings upon publication of the SA/DEIS. Thank you.

Attached is a schedule we propose for the remainder of the case. We have added slightly more detail related to key target dates. Specifically, we have included the Army Corps of Engineers (ACOE) permitting processes and the signing of the Programmatic Agreement (PA) that would conclude consultation pursuant to Section 106 of the National Historic Preservation Act (NHPA).

### **Water Supply**

Seeley Wastewater Treatment Facility (SWWTF) published a Draft Mitigated Negative Declaration (DMND) evaluating, under the California Environmental Quality Act (CEQA), potential impacts associated with the proposed upgrade of the existing facility to a Title 22 compliant facility. As Commission knows, up to 200,000 gallons per day (GPD) of treated water from this facility will be used for the IVSP. As a result of comments received on the DMND from intervenors for this project and others, SWWTF made a reasoned and appropriate decision to evaluate the impacts of the upgrade project in an Environmental Impact Report (EIR). The EIR will be completed before a ROD is issued for IVSP. Because the SWWTF did not issue a Final Mitigated Negative Declaration and approve the upgrade project, the Commission and the BLM



need to independently review the potential impacts associated with this related project. To assist in these efforts, the Applicant's environmental consultants (i.e., URS Corp and Ecosphere Environmental Services) recently prepared and docketed additional information evaluating the potential impacts associated with the upgrade project. Once Seeley completes the EIR for the upgrade project, (anticipated to be completed end of March), the Applicant will docket additional information. The Applicant understands that the staff is currently conducting an independent review of the potential impacts associated with the SWWTF upgrade project and intends to release this review for public comment by late Spring. This information will then be incorporated into the Supplemental Staff Assessment (SSA)/Final Environmental Impact Statement (FEIS).

### **Rare Plant Surveys**

An Interagency Memorandum (IM) was issued by the BLM in the October/November 2009 timeframe related to rare plant surveys required for large-scale solar projects. This IM includes more stringent surveying requirements. Given the ten year rain event the project site received early this year, Tessera Solar recommended that early and late spring surveys be completed in an effort to ensure that potential impacts on rare plants are avoided and minimized to the extent practicable and that unavoidable impacts are fully mitigated. It is currently believed the BLM may compel the Applicant to conduct Fall 2010 rare plant surveys. It should be noted that surveys in the Fall timeframe may have a significant effect on beginning construction. Based on the potential species list provided to the Applicant, it is not anticipated that the fall surveys would result in any additional information that cannot be obtained through the two Spring surveys currently underway. The Applicant continues to seek clarity on this issue from the BLM.

### **Biological Resources**

The United States Fish and Wildlife Service (USFWS) accepted the Applicant's Biological Assessment (BA) on January 29, 2010. The BA discussed potential impacts on the Peninsular Big Horn Sheep (PBHS) and the Flat Tailed Horned Lizard (FTHL) and their associated habitats. It should be noted that on March 1, 2010 the USFWS reopened the public comment period on the proposed rule to list the FTHL as *Threatened* under the Endangered Species Act (ESA). It is the Applicant's understanding that the BLM has issued a memorandum stating that the project is likely to adversely affect the FTHL. Conversely, the Applicant understands that the BLM has concluded that the project is not likely to adversely affect the PBHS. The applicant awaits a Conference Opinion from the USFWS related to the FTHL.

### **Cultural Resources**

It is the Applicant's understanding that a draft Programmatic Agreement is a work in progress and a draft should be transmitted to participating entities by March 22, 2010. In an effort to be responsive to participating entities in the Section 106 process; Tessera Solar has recommended that a comprehensive ethnographic study be completed within the Area of Potential Effect. The scope and schedule of this effort have yet to be defined.

### **Glint and Glare Analysis**

In an effort to be responsive to CEC and BLM concerns related to potential glint and glare issues along Interstate 8 (I-8) and on sensitive viewers elsewhere; the Applicant has commissioned a glint and glare analysis that will determine the potential impacts associated with reflections from the SunCatcher on viewers. This study is being completed by POWER Engineers and will be completed by mid to late April.



## **ACOE - Section 404 (B) (1) Alternatives Analysis**

The Applicant has been in close coordination with the ACOE related to potential impact on Waters of the United States (WUS); working through criteria and analysis that will assist the ACOE in making a determination of the Least Environmentally Damaging Practicable Alternative. As a part of this consultation the ACOE requested that the California Rapid Assessment Model (CRAM) be completed on the washes located on the site. The Applicant has agreed and the CRAM should be completed in the late April to early May timeframe. Occurring parallel with the CRAM effort, the Applicant has been developing the 404 (B) (1) Alternatives Analysis and will complete this effort within the same timeframe as the CRAM. The Applicant seeks clarity on what additional mitigation the ACOE may compel that has not already been agreed upon by California Department of Fish and Game (CDFG), USFWS, the Regional Water Quality Control Board (RWQCB), the BLM and CEC.

### **Public Comment Period**

On February 22, 2010, the Department of Interior published a Notice of Availability (NOA) in the Federal Register (75 FR 7624-25) informing the public of the issuance of the SA/DEIS. The NOA stated that the BLM would consider all written comments on the DEIS submitted within 90 days of the publication of the Environmental Protection Agency's (EPA) NOA in the federal register. The EPA published the NOA for the BLM's DEIS on February 26, 2010 (75 FR 8937), commencing the public comment period. The EPA's NOA incorrectly provided a 45 day comment period, the comment period required for issuances of a Grant for Right of Way (not a Resource Management Plan Amendment that requires a 90 day review period). We understand that the EPA published a correction noting that the public comment period extends for ninety days of the original publication of the EPA's NOA and that therefore, the comment period closes on May 26, 2010.

It should be noted that the DOI mistakenly issued a NOA for the SA/DEIS on February 19, 2010 (75 FR 7515-7517). On February 23, 2010, the DOI published a correction in the Federal Register withdrawing the February 19th NOA (75 FR 8105). This notice served to clarify that the NOA published on February 22, 2010 is the operative NOA and that NOA remains in effect.

### **Errors and Omissions in the SA/DEIS**

The Applicant has thoroughly reviewed the Commission's and BLM's SA/DEIS (dated February 12, 2010). Our comments on this assessment will be transmitted to Commission on Friday March 12, 2010. The Applicant is confident that this information will add additional layers of clarity to an already substantial document.

### **Workshop Topics**

The Applicant would like an opportunity to address the following topics during the workshops scheduled for 3.22/23. 2010:

- Land Use/Recreation
- Visual Resources
- Biological Resources
- Soil and Water

- Noise
- Alternatives
- Cumulative Impacts
- Land Use Plan Amendment
- Various Conditions for Certification

Again – Tessera Solar appreciates the continued herculean efforts the Commission and the BLM put towards this very exciting and important project. Should you have any questions associated with this status report, please call me at 602-535-3588.

Sincerely

A handwritten signature in blue ink, appearing to read 'Richard Knox', with a stylized flourish at the end.

Richard Knox  
Permitting Director  
Tessera Solar Americas

**REVISED**  
**IMPERIAL VALLEY SCHEDULE REVIEW**

3/8/2010

ACTIVITY	Committee 3/1/10 Committee Order	Applicant	
		Proposed Lapsed Time	Proposed Schedule
<del>Publish SA/DEIS</del>	<del>2/12/2010</del>		<del>2/12/2010</del>
<del>Publish NOA</del>			<del>2/26/2010</del>
Initiate USFWS (BA)	2/15/2010		2/12/2010
Notice SA Workshops			2/12/2010
SA Workshops	3/1/2010	SA + 2-3 wks	2/26/2010
ACOE LEDPA			5/17/2010
Applicant Testimony	3/15/2010	SA + 4 weeks	3/15/2010
PHC Statements	3/15/2010	SA + 4 weeks	3/15/2010
Prehearing Conference	3/22/2010	SA + 5 weeks	3/21/2010
Other Testimony	4/1/2010	SA + 6 weeks	4/1/2010
Notice Hearings			4/5/2010
Rebuttal Testimony	4/8/2010	SA + 7 weeks	4/8/2010
Final Prehear. Conf.	4/8/2010	SA + 7 weeks	4/8/2010
Evidentiary Hearings	4/19/2010	SA + 8 weeks	4/19/2010
Post Hearing Briefs	5/3/2010	EH + 2 weeks	5/3/2010
DEIS Comment Ends	5/27/2010	DEIS + 90 days	5/27/2010
USFWS BO	5/17/2010	BA + 90 days	5/13/2010
Final Cultural PA	5/17/2010		5/17/2010
Draft SSA/FEIS to BLM			6/11/2010
Submit NOA to Fed. Reg.		NOA - 14 days	6/11/2010
<del>Publish SSA/FEIS</del>	<del>6/15/2010</del>	<del>Comment + 4 wks</del>	<del>6/25/2010</del>
<del>Publish NOA</del>		<del>SSA</del>	<del>6/25/2010</del>
Begin Governor Review		FEIS	6/25/2010
Hearing??			??
Publish PMPD	7/1/2010	SSA + 2 weeks	7/9/2010
Notice PMPD Hearing			7/16/2010
End of FEIS Comment	7/15/2010	FEIS + 4 weeks	7/25/2010
End of Protest Period		FEIS + 4 weeks	7/25/2010
PMPD Hearing	7/21/2010	PMPD + 3 weeks	7/30/2010
Internal Draft ROD			7/25/2010
PMPD Comment Ends	8/2/2010	PMPD + 30 days	8/8/2010
End Governor Review		FEIS + 60 days	8/24/2010
Revised PMPD	TBD	PMPD + 5 weeks	8/16/2010
<del>Final Decision Hearing</del>	<del>8/25/2010</del>	<del>PMPD + 2 weeks</del>	<del>8/30/2010</del>
<del>ACOE ROD</del>			<del>8/30/2010</del>
<del>DOE ROD</del>			<del>8/30/2010</del>
<del>BLM ROD (Maximum)</del>	<del>8/25/2010</del>		<del>8/30/2010</del>
<b>Start Construction</b>		Final Decision + 1 da	<b>8/31/2010</b>



**BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA  
1516 NINTH STREET, SACRAMENTO, CA 95814  
1-800-822-6228 – WWW.ENERGY.CA.GOV**

**APPLICATION FOR CERTIFICATION  
For the SES SOLAR TWO PROJECT**

**Docket No. 08-AFC-5**

**PROOF OF SERVICE**

**(Revised 1/27/10)**

**APPLICANT**

Richard Knox  
Project Manager  
SES Solar Two, LLC  
4800 N Scottsdale Road.,  
Suite 5500  
Scottsdale, AZ 85251  
[richard.knox@tesseractosolar.com](mailto:richard.knox@tesseractosolar.com)

Kim Whitney,  
Associate Project Manager  
SES Solar Two, LLC  
4800 N Scottsdale Road.,  
Suite 5500  
Scottsdale, AZ 85251  
[kim.whitney@tesseractosolar.com](mailto:kim.whitney@tesseractosolar.com)

**CONSULTANT**

Angela Leiba, Sr. Project  
Manager URS Corporation  
1615 Murray Canyon Rd.,  
Ste. 1000  
San Diego, CA 92108  
[Angela\\_Leiba@urscorp.com](mailto:Angela_Leiba@urscorp.com)

**APPLICANT'S COUNSEL**

Allan J. Thompson  
Attorney at Law  
21 C Orinda Way #314  
Orinda, CA 94563  
[allanori@comcast.net](mailto:allanori@comcast.net)

**INTERESTED AGENCIES**

California ISO  
[e-recipient@caiso.com](mailto:e-recipient@caiso.com)

Daniel Steward, Project Lead  
BLM – El Centro Office  
1661 S. 4<sup>th</sup> Street  
El Centro, CA 92243  
[daniel\\_steward@ca.blm.gov](mailto:daniel_steward@ca.blm.gov)

Jim Stobaugh,  
Project Manager &  
National Project Manager  
Bureau of Land Management  
BLM Nevada State Office  
P.O. Box 12000  
Reno, NV 89520-0006  
[jim\\_stobaugh@blm.gov](mailto:jim_stobaugh@blm.gov)

**INTERVENORS**

CURE  
c/o Tanya A. Gulesserian  
Loulana Miles  
Marc D. Joseph  
Adams Broadwell Joseph  
& Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco,  
CA 94080  
[tgulesserian@adamsbroadwell.com](mailto:tgulesserian@adamsbroadwell.com)  
[lmiles@adamsbroadwell.com](mailto:lmiles@adamsbroadwell.com)

**ENERGY COMMISSION**

JEFFREY D. BYRON  
Commissioner and Presiding  
Member  
[jbyron@energy.state.ca.us](mailto:jbyron@energy.state.ca.us)

\*ANTHONY EGGERT  
Commissioner and  
Associate Member  
[aeggert@energy.state.ca.us](mailto:aeggert@energy.state.ca.us)

Raoul Renaud  
Hearing Officer  
[rrenaud@energy.state.ca.us](mailto:rrenaud@energy.state.ca.us)

\*Kristy Chew, Adviser to  
Commissioner Byron  
[kchew@energy.state.ca.us](mailto:kchew@energy.state.ca.us)

Caryn Holmes, Staff Counsel  
Christine Hammond, Co-Staff  
Counsel  
[cholmes@energy.state.ca.us](mailto:cholmes@energy.state.ca.us)  
[chammond@energy.state.ca.us](mailto:chammond@energy.state.ca.us)

Christopher Meyer  
Project Manager  
[cmeyer@energy.state.ca.us](mailto:cmeyer@energy.state.ca.us)

Public Adviser  
[publicadviser@energy.state.ca.us](mailto:publicadviser@energy.state.ca.us)

\*indicates change

DECLARATION OF SERVICE

I, Corinne Lytle, declare that on March 9, 2010, I served and filed copies of the attached Applicant's Status Report #8. The original document, filed with the Docket Unit, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at:  
[\[http://www.energy.ca.gov/sitingcases/solartwo/index.html\]](http://www.energy.ca.gov/sitingcases/solartwo/index.html).

The documents have been sent to both the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit, in the following manner:

*(Check all that Apply)*

FOR SERVICE TO ALL OTHER PARTIES:

  X   sent electronically to all email addresses on the Proof of Service list;

  X   by personal delivery or by depositing in the United States mail at \_\_\_\_\_ with first-class postage thereon fully prepaid and addressed as provided on the Proof of Service list above to those addresses NOT marked "email preferred."

*AND*

FOR FILING WITH THE ENERGY COMMISSION:

  X   sending an original paper copy and one electronic copy, mailed and emailed respectively, to the address below (*preferred method*);

*OR*

       depositing in the mail an original and 12 paper copies, as follows:

CALIFORNIA ENERGY COMMISSION

Attn: Docket No. 08-AFC-5  
1516 Ninth Street, MS-4  
Sacramento, CA 95814-5512  
[docket@energy.state.ca.us](mailto:docket@energy.state.ca.us)

I declare under penalty of perjury that the foregoing is true and correct.

Original signed by

\_\_\_\_\_

Corinne Lytle